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8 UNITED STATES DISTRICT COURT
9 FOR THE CENTRAL DISTRICT OF CALIFORNIA
10 WESTERN DIVISION

11 JENI PEARSONS, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES OF AMERICA, et
15 al.,

16 Defendants.

No. CV 23-07952-RGK-MAR

**[PROPOSED] ORDER GRANTING
THE UNITED STATES OF
AMERICA'S MOTION TO DISMISS**

17
18 The Motion to Dismiss ("Motion") filed by defendant United States of America,
19 having come on for hearing, and the Court having considered the Motion, the
20 Opposition, and the Reply, the evidence presented, and oral argument thereon,

21 THE COURT HEREBY FINDS THAT:

- 22 1. The Motion is Granted.
- 23 2. Counts I, II, and III, which assert claims against the United States under the
24 Federal Tort Claims Act, are all dismissed for lack of subject matter
25 jurisdiction. The United States has not waived its sovereign immunity with
26 respect to claims arising of the detention of goods, and such claims therefore
27 cannot proceed under the Federal Tort Claims Act. 28 U.S.C. § 2670(c); *see*
28 *Cervantes v. United States*, 330 F.3d 1186, 1189 (9th Cir. 2003); *Agro*

- 1 *Dynamics, LLC v. United States*, No. 20-CV-2082-JAH-KSC, 2023 WL
 2 6130813, at *13–14 (S.D. Cal. Sept. 19, 2023).
- 3 3. Counts VI, VII, and VIII are dismissed for lack of subject matter jurisdiction
 4 with respect to the United States, which has been substituted as their defendant
 5 in place of Special Agent Zellhart pursuant to the Attorney General’s
 6 certification under the Westfall Act, for the same reasons as above. The United
 7 States has not waived its sovereign immunity with respect to tort claims arising
 8 of the detention of goods, and such claims therefore cannot proceed against the
 9 United States under the Federal Tort Claims Act. 28 U.S.C. § 2670(c).
- 10 4. Counts II, VII, and IV for breach of bailment are also dismissed for failure to
 11 state a claim because the First Amended Complaint does not allege facts
 12 showing that Plaintiffs entered into a contract with the government, but rather
 13 alleges that the FBI seized the goods against the Plaintiffs’ will during a
 14 warrant operation. *See Kam-Almaz v. United States*, 682 F.3d 1364, 1369 (Fed.
 15 Cir. 2012).
- 16 5. Count V for a violation of the Takings Clause is dismissed for failure to state a
 17 claim. A seizure of evidence by law enforcement officers in a warrant
 18 operation is not a taking. *See Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 543
 19 (2005); *Agro Dynamics*, 2023 WL 6130813 at *8.
- 20 6. Counts IX and X for violations of the Bane Act are dismissed for lack of
 21 subject matter jurisdiction because the United States has not waived its
 22 sovereign immunity with respect to constitutional torts. *See Minneci v. Pollard*,
 23 565 U.S. 118, 126 (2012); *Blanchard v. County of Los Angeles*, 2022 WL
 24 17081308, at *3 (C.D. Cal. Aug. 25, 2022). Furthermore, the First Amended
 25 Complaint also fails to allege facts sufficient to state a Bane Act claim, which
 26 requires a showing of threats, intimidation, or coercion, and these claims are
 27 subject to dismissal on that basis as well. *See Han v. Cty. of Los Angeles*, 2016
 28 WL 2758241, at *9 (C.D. Cal. May 12, 2016). Here, the First Amended

1 Complaint alleges that the property at issue was seized in a warrant operation
2 that the FBI executed at a facility owned by U.S. Private Vaults, not that the
3 property was seized by intimidating or threatening the Plaintiffs.

- 4 7. Count XI, entitled “as-applied deprivation of property without due process of
5 law under the Fifth Amendment Due Process Clause,” is dismissed because it
6 is not a cause of action. If interpreted as asserting a constitutional violation, it
7 is dismissed for lack of subject matter jurisdiction because the United States
8 has not waived its sovereign immunity with respect to constitutional torts. *See*
9 *Pesnell v. United States*, 64 F. App’x 73, 74–75 (9th Cir. 2003).

10 IT IS HEREBY ORDERED that the Motion is granted and the United States is
11 dismissed as a party. The First Amended Complaint’s claims as against the United
12 States, including those for which the United States has substituted as defendant, are
13 dismissed without leave to amend.

14 IT IS SO ORDERED.

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16 Dated: _____

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18 THE HONORABLE R. GARY KLAUSNER
19 United States District Judge
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